

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JOHN ALLEN HESSMER,

Plaintiff,

v.

**ROLAND COLSON,
DERRICK SCHOFIELD, and TDOC,**

Defendants.

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No. 3:12-cv-459

Judge Trauger

ORDER

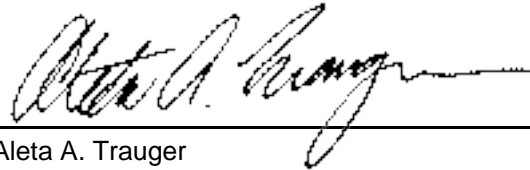
Before the Court is plaintiff John Allen Hessmer's Notice of Appeal and Error (ECF No. 21). Mr. Hessmer is a state prisoner incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee. The court denied Mr. Hessmer's application to proceed as a pauper on the basis that the plaintiff was a "three-striker" under 18 U.S.C. § 1915(g). Although the plaintiff alleged in his complaint that he was under "imminent danger of serious physical injury," *id.*, the court found that the allegations in the complaint, even accepted as true, did not demonstrate that the plaintiff was actually in imminent danger of serious physical injury. The court thereafter dismissed Mr. Hessmer's *pro se* civil rights complaint for failure to prosecute after the plaintiff failed to pay the required filing fee.

In his notice of appeal, Mr. Hessmer specifically takes issue with the court's finding that he is not under imminent danger of serious physical harm. Mr. Hessmer has not submitted either the \$455 appellate filing fee or an application to pursue his appeal as a pauper. If he had filed such an application, the court would have been required to deny it for the same reasons it previously denied the motion to proceed in district court without prepaying fees and costs. Accordingly, to pursue his appeal, Mr. Hessmer must either submit the appellate filing fee or obtain leave from the Sixth Circuit Court of Appeals to proceed as a pauper. His application to proceed as a pauper in the Court of Appeals must be filed within **30 DAYS** of the date this order is entered on the electronic docket. Fed. R. App. P. 24(a)(5). Failure either to submit the filing fee or to obtain leave to proceed as a pauper directly from the Sixth Circuit Court of Appeals may result in dismissal of the appeal. The court hereby **CERTIFIES** that Mr. Hessmer's appeal is taken in good faith for purposes

of 28 U.S.C. § 1915(a)(3).

The Clerk of Court is **DIRECTED** to give notice of this order to the Sixth Circuit Court of Appeals.

It is so **ORDERED**.

A handwritten signature in black ink, appearing to read 'Aleta A. Trauger', written over a horizontal line.

Aleta A. Trauger
United States District Judge